

COHEN, WEISS AND SIMON LLP

COUNSELLORS AT LAW

330 WEST 42ND STREET

NEW YORK, N.Y. 10036-6976

(212) 563-4100

WRITER'S DIRECT INFORMATION:

PHONE: (212) 356-0243

FAX: (646) 473-8243

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ZLEEDS@CWSNY.COM

February 17, 2012

SAMUEL J. COHEN (1908-1991)
HENRY WEISS (1910-2004)

RICHARD C. HARMON
SENIOR ATTORNEY

DAVID R. HOCK*
CLAIRE TUCK*
MARCELLE J. HENRY
EVAN HUDSON-PLUSH*
MICHAEL S. ADLER*
JOSHUA ELLISON*
ZACHARY N. LEEDS*
TZVI MACKSON
NOELIA E. HURTADO
DANYA AHMED*
KATE M. SWEARENGEN**

* ALSO ADMITTED IN NJ
** ADMITTED IN NJ ONLY

BRUCE H. SIMON
ROBERT S. SAVELSON
STEPHEN B. MOLDOF
MICHAEL E. ABRAM
KEITH E. SECULAR
PETER HERMAN
RICHARD M. SELTZER
JANI K. RACHELSON
BABETTE CECCOTTI*
SUSAN DAVIS*
MICHAEL L. WINSTON
THOMAS N. CIANTRA
JOSEPH J. VITALE*
PETER D. DECHIARA
LISA M. GOMEZ*
BRUCE S. LEVINE
TRAVIS M. MASTRODDI

By Electronic Case Filing and Regular Mail

The Honorable Lois Bloom
United States Magistrate District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East, Room 1214 S
Brooklyn, NY 11201

Re: *Ferrara et. al., v. Metro D Excavation and Foundation, Inc.*
Case No. 10-CV-4215 (SLT)(LB)

Dear Judge Bloom:

This firm represents the plaintiffs in the above-referenced matter. We write pursuant to Local Rule 37.3 and Federal Rules of Civil Procedure 37 and 69(a) to seek an order directing defendant Metro D Excavation and Foundation, Inc. (the "Company"), to appear for a post-judgment deposition and produce documents pursuant to a Subpoena Deuces Tecum Ad Testificandum, and to provide answers to an information subpoena, served pursuant to 5224 of the N.Y.C.P.L.R.

In this case, on August 17, 2011, the Court entered a default judgment against the Company for \$49,735.67, plus per diem interest of \$11.58 from February 25, 2011 through the date of judgment equaling \$2,014.92. A copy of the Default Judgment is attached as Exhibit A.

On September 7, 2011 plaintiffs sent a restraining notice and information subpoena to the Company by certified mail, return receipt requested. A copy of the restraining notice and information subpoena is attached as Exhibit B. The Company failed to respond to the information subpoena.

COHEN, WEISS AND SIMON LLP

The Honorable Lois M. Bloom
February 17, 2012
Page 2

On November 22, 2011 the Company was served with a Subpoena Duces Tecum Ad Testificandum dated November 18, 2011 commanding them to produce documents by January 9, 2012 and appear at a deposition on January 26, 2012 at the Brooklyn Federal Courthouse. A copy of the subpoena is attached as Exhibit C. The affidavit of service of the subpoena is attached as Exhibit D.

The Company failed to respond to the subpoena or appear at the deposition, or otherwise contact the plaintiffs regarding the subpoenas. A copy of the Company's January 26, 2012 deposition transcript noting its failure to appear is attached as Exhibit E.

As of today, plaintiffs have not heard from the Company.

Pursuant to Section 5224 of the N.Y.C.P.L.R, made applicable to this proceeding by Fed. R. Civ. P. 69(a), the Company is required to respond to the subpoena and information requests, which it has failed to do.

Federal Rule of Civil Procedure 37 provides that in the event a party fails to respond to discovery, the party seeking discovery may move to compel such discovery. Pursuant to Rule 37, and Local Rule 37.3, plaintiffs hereby request that this Court issue an Order requiring the Company to comply with the information subpoena and the Subpoenas Duces Tecum Ad Testificandum served on it by the plaintiffs. Specifically, plaintiff requests that the Company be required to produce documents responsive to the subpoena at this firm by March 16, 2012. Plaintiffs further request that Company be required to appear at a deposition at this firm on March 27, 2012 at 10 a.m. A Proposed Order along these lines is attached as Exhibit F.

Thank you for your consideration.

Respectfully submitted,

/s/ Zachary N. Leeds

ZNL;jmm

cc: Metro D Excavation and Foundation, Inc. (by certified and regular mail)

EXHIBIT A

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ AUG 17 2011 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOSEPH A. FERRARA, SR., FRANK H.
FINKEL, MARC HERBST, DENISE
RICHARDSON, THOMAS CORBETT,
ANTHONY D'AQUILA, THOMAS
GESUALDI, LOUIS BISIGNANO,
DOMINICK MARROCCO, and ANTHONY
PIROZZI, *as Trustees and Fiduciaries of the
Local 282 Pension Trust Fund, the Local 282
Annuity Trust Fund, the Local 282 Job
Training Fund, and the Local 282 Vacation
and Sick Leave Trust Fund,*

JUDGMENT
10-CV-~~2415~~ (SLT)
4215

Plaintiffs,

-against-

METRO D EXCAVATION &
FOUNDATION, INC.,

Defendant.
-----X

A Memorandum and Order of Honorable Sandra L. Townes, United States District Judge, having been filed on August 16, 2011, adopting in its entirety the unopposed Report and Recommendation of Magistrate Judge Lois Bloom, dated July 7, 2011; granting Plaintiffs' motion for a default judgment; directing the Clerk of Court to enter judgment against Defendant Metro D Excavation & Foundation, Inc., in the amount of \$23,484.65 for unpaid contributions, \$7,949.59 for interest plus *per diem* interest of \$11.58 from February 25, 2011, through the date of judgment; \$7,949 for liquidated damages plus *per diem* liquidated damages interest from February 25, 2011, through the date of judgment; \$5,508.00 for attorney's fees, \$487.16 for costs, and \$350.00 for audit fees; and denying plaintiffs' motion for injunctive relief; it is

Page 2

JUDGMENT
10-CV- 4215 (SLT)

ORDERED and ADJUDGED that the unopposed Report and Recommendation of Magistrate Judge Lois Bloom is adopted in its entirety; that Plaintiffs' motion for a default is granted; that judgment is hereby entered in favor of Plaintiffs Joseph A. Ferrara, Sr., Frank H. Finkel, Marc Herbst, Denise Richardson, Thomas Corbett, Anthony D'Aquila, Thomas Gesualdi, Louis Bisignano, Dominick Marrocco, and Anthony Pirozzi, *as Trustees and Fiduciaries of the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Training Fund, and the Local 282 Vacation and Sick Leave Trust Fund*, and against Defendant Metro D Excavation & Foundation, Inc., in the amount of \$23,484.65 for unpaid contributions, \$7,949.59 for interest plus *per diem* interest of \$11.58 from February 25, 2011, through the date of judgment in the amount of \$2,003.34; \$7,949.59 for liquidated damages plus *per diem* liquidated damages interest of \$11.58 from February 25, 2011, through the date of judgment in the amount of \$2,003.34; \$5,508.00 for attorney's fees, \$487.16 for costs, and \$350.00 for audit fees; and that it is further,

ORDERED and ADJUDGED that Plaintiffs' motion for injunctive relief is denied.

Dated: Brooklyn, New York
August 16, 2011

ROBERT C. HEINEMANN
Clerk of Court

EXHIBIT B

COHEN, WEISS AND SIMON LLP**COUNSELLORS AT LAW****330 WEST 42ND STREET****NEW YORK, N.Y. 10036-6976****(212) 563-4100**

WRITER'S DIRECT INFORMATION:

PHONE: (212) 356-0243

FAX: (646) 473-8243

E-MAIL: ZLEEDS@CWSNY.COM

September 7, 2011

SAMUEL J. COHEN (1908-1991)**HENRY WEISS (1910-2004)****DAVID R. HOCK*****CLAIRE TUCK*****RICHARD C. HARMON****MARCELLE J. HENRY****EVAN HUDSON-PLUSH*****MICHAEL S. ADLER*****JOSHUA ELLISON*****ZACHARY N. LEEDS****TZVI MACKSON****NOELIA E. JARAMILLO****DANYA AHMED***

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THOMAS N. CIANTRA
JOSEPH J. VITALE*
PETER D. DECHIARA
LISA M. GOMEZ*
BRUCE S. LEVINE
TRAVIS M. MASTRODDI

By Certified Mail—Return Receipt Requested

Metro-D Excavation and Foundation, Inc.
 50-63 41st Street
 Astoria, New York, 11104

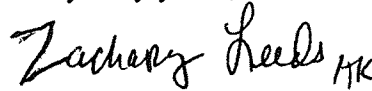
Re: Ferrara et. al., v. Metro-D Excavation and Foundation, Inc. 11-CV-4125
(SLT)

Dear Sir/Madam:

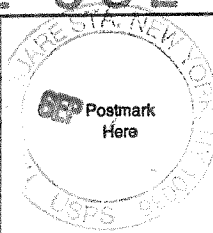
This firm represents the plaintiff in the above referenced matter. Enclosed please find two copies of a Restraining Notice and Information Subpoena as well as copy of the relevant judgment obtained against Metro D. Please return the above referenced documents in the enclosed postage-paid, self-addressed stamped envelope. If you have any questions, please call me.

Thank you.

Very truly yours,



Zachary N. Leeds

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For delivery information visit our website at www.usps.com	
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Total Postage & Fees	\$
	
Sent To Metro-D Excavation + FOUND. Inc Street, Apt. No., or PO Box No. 50-63 41st St. City, State, ZIP+4 ASTORIA NY 11104	

ZNL 240-10208

0010 1060 0001 3236 3160

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOSEPH A. FERRARA, SR., FRANK H.
FINKEL, MARC HERBST, DENISE
RICHARDSON, THOMAS CORBETT,
ANTHONY D'AQUILA, THOMAS GESUALDI,
LOUIS BISIGNANO, DOMINICK MARROCCO,
and ANTHONY PIROZZI, as Trustees and
Fiduciaries of the Local 282 Pension Trust Fund,
the Local 282 Annuity Trust Fund, the Local 282
Job Trust Fund, and the Local 282 Vacation and
Sick Leave Trust Fund,

Plaintiff,

- against -

METRO D EXCAVATION AND FOUNDATION,
INC.,

Defendant.
-----X

Case No.
11-CV-4215 (SLT)

RESTRAINING NOTICE
AND INFORMATION
SUBPOENA

TO: Metro D Excavation and Foundation, Inc.
50-63 41st Street
Astoria, New York, 11104

In an action in this Court between Joseph A. Ferrara, Sr., Frank H. Finkel, Marc Herbst, Denise Richardson, Thomas Corbett, Anthony D'aquila, Thomas Gesualdi, Louis Bisignano, Dominick Marrocco, and Anthony Pirozzi, as Trustees and Fiduciaries of the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Trust Fund, and the Local 282 Vacation and Sick Leave Trust Fund, plaintiffs, and Metro D Excavation and Foundation, Inc. ("Metro D"), defendant, a default judgment was entered on August 17, 2011 in favor of plaintiff and against Metro D in the amount of \$49,735.67, plus per diem interest of \$11.58 from February 25, 2011 through the date of judgment equaling \$2,014.92, all of which remains due and owing.

TAKE NOTICE that pursuant to subdivision (b) of Section 5222 of the Civil Practice Law and Rules, which is set forth in full herein, you are hereby forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any property in which any Judgment-Debtor has an interest, or pay over, or otherwise dispose of, any debt except as therein provided.

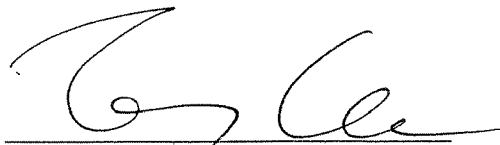
TAKE FURTHER NOTICE that this Restraining Notice also covers all property in which any Judgment-Debtor has an interest hereafter coming into its possession or custody, and all debts hereafter coming due to any Judgment-Debtor, or both.

TAKE FURTHER NOTICE that disobedience of this Restraining Notice is punishable as a contempt of court.

YOU ARE HEREBY DIRECTED to answer in writing under oath, separately and fully, each question in the questionnaire accompanying this Restraining Notice and Information Subpoena, each answer referring to the question to which it responds; and that you return the answers, together with the original of the questions within seven (7) days after your receipt of the questions and this Restraining Notice and Information Subpoena in the stamped, self-addressed envelope enclosed herewith.

TAKE NOTICE that false swearing or failure to comply with this Information Subpoena is punishable as a contempt of court.

Dated: September 7, 2011
New York, New York



Zachary N. Leeds
COHEN, WEISS and SIMON LLP
330 West 42nd Street
New York, New York 10036
(212) 356-0251

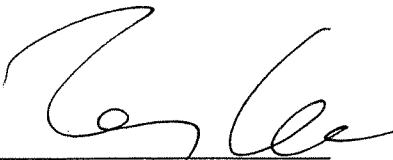
Attorneys for Judgment-Creditor

CIVIL PRACTICE LAW AND RULES

Section 5222(b). Effect of restraint: prohibition of transfer; duration. A judgment-debtor or obligor served with a restraining notice is forbidden to make or suffer any sale, assignment, transfer or interference with any property in which he or she has an interest, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the judgment or order is satisfied or vacated. A restraining notice served upon a person other than the judgment-debtor or obligor is effective only if, at the time of service, he or she owes a debt to the judgment-debtor or obligor or he or she is in the possession or custody of property in which he or she knows or has reason to believe the judgment-debtor or obligor has an interest, or if the judgment-creditor or support collection unit has stated in the notice that a specified debt is owed by the person served to the judgment-debtor or obligor or that the judgment-debtor or obligor has an interest in specified property in the possession or custody of the person served. All property in which the judgment-debtor or obligor is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such a person, including any specified in the notice, then due and thereafter coming due to the judgment-debtor or obligor, shall be subject to the notice except as set forth in subdivisions (h) and (i) of this section. Such a person is forbidden to make or suffer any sale, assignment or transfer of, or any interference with, any such property, or pay over or otherwise dispose of any such debt, to any person other than the sheriff or the support collection unit, except as set forth in subdivisions (h) and (i) of this section, and except upon direction of the sheriff or pursuant to an order of the court, until the expiration of one year after the notice is served upon him or her, or until the judgment or order is satisfied or vacated, whichever event first occurs. A judgment-creditor or support collection unit which has specified personal property or debt in a restraining notice shall be liable to the owner of the property or the person to whom the debt is owed, if other than the judgment-debtor or obligor, for any damages sustained by reason of the restraint. If a garnishee served with a restraining notice withholds the payment of money belonging to the judgment-debtor or obligor in an amount equal to twice the amount on the judgment or order, the restraining notice is not effective as to other property or money.

CERTIFICATION PURSUANT TO SECTION 5224(a)(3)(i) OF THE NEW YORK CIVIL PRACTICE LAW AND RULES

I HEREBY CERTIFY THAT THIS INFORMATION SUBPOENA COMPLIES
WITH RULE 5224 OF THE CIVIL PRACTICE LAW AND RULES AND THAT I HAVE A
REASONABLE BELIEF THAT THE PARTY RECEIVING THIS SUBPOENA HAS IN THEIR
POSSESSION INFORMATION ABOUT THE DEBTOR THAT WILL ASSIST THE CREDITOR
IN COLLECTING THE JUDGMENT.


Zachary N. Leeds

**QUESTIONS TO BE ANSWERED BY DEFENDANT METRO D EXCAVATION &
FOUNDATION, INC. (THE "COMPANY" OR THE "JUDGMENT-DEBTOR"),
IN RESPONSE TO INFORMATION SUBPOENA***

Ferrara et. al., v. Metro D Excavation & Foundation, Inc.
Case No. 11-CV-4215 (SLT)

QUESTIONS FOR THE COMPANY

1. What is the Company's full name, including all trade names?

ANSWER _____

2. What are the street and mailing addresses of all business locations of the judgment-debtor?

ANSWER _____

3. List the names and addresses of all stockholders, officers, and directors of the Company.

ANSWER _____

4. If the Company is a partnership, list the names and addresses of all partners.

ANSWER _____

* If additional space is necessary, please use and attach additional pages.

5. If the Company is a limited partnership, list the names and addresses of all general partners.

ANSWER _____

6. Set forth in detail the name, address, and telephone number of all businesses in which the principals of the Company now have an interest and set forth the nature of the interest.

ANSWER _____

7. For all bank accounts of the judgment-debtor maintained within the past thirty-six (36) months, list the name of the bank, the bank's address, the account number, and the name in which the account is held.

ANSWER _____

8. Specifically state the present location of all books and records of the Company, including checkbooks.

ANSWER _____

9. State the name and address of the person, persons or entities who prepare, maintain and/or control the Company records and checkbooks of the judgment-debtor.

ANSWER _____

10. List all physical assets of the judgment-debtor and their location. If any asset is subject to a lien, state the name and address of the lien holder and the amount due on the lien.

ANSWER _____

11. Does the business own any real estate? Yes _____ No _____

If yes, state the following for each property:

- (a) Name(s) in which property is owned:

ANSWER _____

- (b) Address of property:

ANSWER _____

- (c) Date property was purchased:

ANSWER _____

- (d) Purchase price:

ANSWER _____

- (e) Name and address of mortgage holder:

ANSWER _____

[illegible]

12. List all motor vehicles owned by the judgment-debtor, stating the following for each vehicle:

(a) Make, model, and year:

ANSWER _____

(b) License plate number:

ANSWER _____

(c) Vehicle identification number (VIN):

ANSWER _____

(d) If there is a lien on the vehicle, the name and address of the lien holder and the amount due on the lien:

ANSWER _____

13. List all accounts receivable due the business, stating the name, address and amount due on each receivable.

NAME AND ADDRESS	AMOUNT DUE

--	--

14. For any transfer of business assets that occurred since January 1, 2007, specifically identify:

(a) The nature of the asset: _____

(b) The date of the transfer: _____

(c) Name and address of the person to whom the asset was transferred: _____

(d) The consideration paid for the asset and the form in which it was paid (check, cash, etc.): _____

(e) Explain in detail what happened to the consideration paid for the asset. _____

15. If the business is alleged to be no longer active, set forth:

(a) The date of cessation _____

(b) All assets as of the date of cessation: _____

(c) The present location of those assets: _____

If the assets were sold or transferred, set forth:

(d) The nature of the assets: _____

(e) Date of transfer: _____

(f) Name and address of the person to whom the assets were transferred:

(g) The consideration paid for the assets and the form in which it was paid:

(h) Explain in detail what happened to the consideration paid for the assets.

16. Set forth all other judgments that you are aware of that have been entered against the judgment-debtor and include the following:

Creditor's Name	Creditor's Attorney	Amount Due	Name of Court	Docket Number

17. For all litigation in which the business is presently involved, state:

(a) Date litigation commenced: _____

(b) Name of party who started the litigation: _____

(c) Nature of the action: _____

(d) Names of all parties and the names, addresses and telephone numbers of their
attorneys:_____

(e) Trial Date:_____

(f) Status of the case:_____

(g) Name of the court and docket number:_____

18. State the name, address and position of the person answering these questions.

ANSWER _____

State of _____

County of _____

Sworn to before me this
____th day of _____ 2011.

(the name signed must be printed beneath)

Notary Public

7010 1060 0001 3236 3160 097E

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2NL 246-10208

Sent To Metro-D Excavation + FOUND, INC.

Street, Apt. No.,
or PO Box No. 50-63 41st St.

City, State, ZIP+4 Astoria NY 11104

PS Form 3800, August 2006 See Reverse for Instructions

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JOSEPH A. FERRARA, SR., FRANK H. FINKEL,
MARC HERBST, DENISE RICHARDSON,
THOMAS CORBETT, ANTHONY D'AQUILA,
THOMAS GESUALDI, LOUIS BISIGNANO,
DOMINICK MARROCCO, and ANTHONY
PIROZZI, as Trustees and Fiduciaries of the Local
282 Pension Trust Fund, the Local 282 Annuity
Trust Fund, the Local 282 Job Trust Fund, and the
Local 282 Vacation and Sick Leave Trust Fund,

Plaintiff,

- against -

METRO D EXCAVATION AND FOUNDATION,
INC.,

Defendant
-----X

Case No.
11-CV-4215 (SLT)

**SUBPOENA DUCES TECUM
AD TESTIFICANDUM**

TO: Metro D Excavation and Foundation, Inc.
50-63 41st Street
Astoria, New York, 11104


In an action in this Court between Joseph A. Ferrara, Sr., Frank H. Finkel, Marc Herbst, Denise Richardson, Thomas Corbett, Anthony D'Aquila, Thomas Gesualdi, Louis Bisignano, Dominick Marrocco, and Anthony Pirozzi, as Trustees and Fiduciaries of the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Trust Fund, and the Local 282 Vacation and Sick Leave Trust Fund, plaintiffs, and Metro D Excavation and Foundation, Inc. ("Metro D"), defendant, a default judgment was entered on August 17, 2011 in favor of plaintiff and against Metro D in the amount of \$49,735.67, plus per diem interest of \$11.58 from February 25, 2011 through the date of judgment equaling \$2,014.92, for a total amount due of **\$51,750.59** all of which remains due and owing.

YOU ARE HEREBY COMMANDED to produce copies of all documents described in Exhibit A, on or before January 9, 2012 at the offices of the Local 282 Trust Funds, c/o Theresa Cody, 2500 Marcus Avenue, Lake Success, NY 11042

YOU ARE FURTHER COMMANDED, pursuant to New York Civil Practice Law and Rules Sections 5223 and 5224, made applicable by Rule 69 of the Federal Rules of Civil Procedure, to designate a representative of the company to appear at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201 in Room S-402 on January 26, 2012 at 10:00 a.m., and at any adjourned date of examination, to be examined under oath, upon oral questions before a person authorized to conduct the examination, on all matters relevant to the satisfaction of the judgment in this action.

TAKE NOTICE that false swearing or failure to comply with this subpoena is punishable as contempt of court.

Dated: November 18, 2011
New York, New York



Zachary N. Leeds
COHEN, WEISS and SIMON LLP
330 West 42nd Street
New York, New York 10036
(212) 356-0251

Attorneys for Judgment-Creditor

EXHIBIT A

Definitions

1. “Metro D” shall mean Metro D Excavation and Foundation, Inc.
2. “Person” shall mean any natural person or any business, legal or governmental entity or association.
3. “Property” shall mean real, personal, business, or other tangible property.
4. “Materials and Equipment” shall mean inventory, materials, machinery, equipment, tools, trucks, automobiles or other personal property.
5. “Asset” shall mean anything of value, including but not limited to property, cash, accounts receivable, security interests, promissory notes or any other right to repayment on a loan, and investments of any kind, ownership interests, goodwill, licenses, and customers lists.
6. “Document” shall mean writings, drawings, graphs, charts, photographs, phone records, and other data compilations from which information can be obtained, translated, if necessary by the respondent through detections devices into reasonably usable form, including without limitation, electronic or data compilations.
7. “Communication” shall mean the transmittal of information in the form of facts, ideas, inquiries or otherwise.
8. “Concerning” means relating to, referring to, describing, evidencing or constituting.
9. “All/Each” shall be construed as all and each.
10. “And/Or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

11. The use of the singular form of any word includes the plural and vice versa.
12. The documents called for are those in the possession, custody or control of the Metro D, wherever located.
13. Unless otherwise specified, the time period covered by this subpoena shall extend from January 1, 2009 through the present.
14. The documents produced are to be segregated by request number.
15. All requests made herein shall be construed to include any supplemental documents responsive to these requests that are later prepared, created or discovered.

Document Requests

1. The Articles of Incorporation and State Corporate Registration Certificates of Metro D.
2. Corporate Bylaws of Metro D including any and all amendments or riders to such documents.
3. All minutes or drafts of minutes of meetings of the Board of Directors of Metro D.
4. All stock certificates issued by or concerning Metro D.
5. All shareholder agreements concerning or referring to Metro D.
6. All corporate notices, filings or reports concerning Metro D filed with, prepared for, or required by, any federal, state, or municipal authority.
7. Any and all real estate deeds, leases, mortgages, mortgage notes, deeds of trust, deeds of trust notes, payment schedules, lease payments, lease accruals, mortgage payments, and all documents, including checks, related to payments of any and all leases, mortgages, or deeds of trust on property leased or owned by Metro D or held for Metro D beneficially by any person or trustee.
8. Any and all records concerning ownership, rental, mortgage, security, or use of material and equipment (including vehicles), by Metro D or any person acting on behalf of Metro D.
9. Any and all quarterly and annual corporate, state, and local tax returns prepared or filed by or on behalf of Metro D.
10. Any and all financial statements, profit and loss statements, balance and income statements, balance sheets, trial balance sheets, ledgers, journals (including cash disbursements and cash receipts), accounting statements, accounting reports, or other documents

designated to present the financial condition and/or asset or property holdings of Metro D in summary form, prepared by Metro D's officers or directors or on its behalf by any person or entity, or submitted to any financial institutions.

11. Copies of all checks, money orders, cashier's checks, wire transfers, electronic transfers, instruments of payments, negotiable instruments, or other documents representing payments or transfers of assets from Metro D to any of its officers, directors, shareholders, or companies or entities owned or controlled by these officers, directors, or shareholders.

12. Any and all bank statements, money market account statements, stock broker account ledgers, passbooks, entry ledgers, computer printouts, or other graphic representations of whatever kind that reflect money, assets or business property held by Metro D at any financial institution, brokerage house, bank, savings institution, safe deposit and trust company, or other financial or credit company.

13. Any and all documents memorializing the sale, merger, transfer of assets, or purchase by Metro D of any other person.

14. Any and all documents memorializing the sale, merger, transfer of assets, or purchase by any other person of any ownership interest in Metro D.

15. Any and all documents memorializing the sale or transfer of any asset sold or valued in excess of \$500 from Metro D to any person.

16. Any and all documents concerning the assumption by any person of the debts and/or liabilities of Metro D.

17. Any and all documents concerning any surety bond, escrow account or any type of insurance procured or maintained by Metro D to guarantee payment of wages, dues,

and assessments, and contributions to any fringe benefit fund to which Metro D is obligated to make contributions pursuant to the terms of a collective bargaining agreement.

18. Any and all documents concerning invoices submitted by Metro D to any third party for services rendered or materials supplied.

19. Any and all operating licenses or other authorizations held by Metro D or otherwise in Metro D's name or possession.

20. Any and all documents related to any operating licenses or other authorizations held by Metro D or otherwise in Metro D's name or possession.

21. All taxes and schedules filed with, or received from, any local, state, or federal tax agency or department, including but not limited to personal income tax returns and schedules, K-1s and any related schedules, and any business tax returns.

22. Any and all financial statements, profit and loss statements, balance and income statements, balance sheets, trial balance sheets, ledgers, journals (including cash disbursements and cash receipts), accounting statements, accounting reports, or other documents designed to present the financial condition of Metro D or any business entity.

EXHIBIT D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Joseph A. Ferrara, Sr., et al., as Trustees and Fiduciaries of the Local 282
Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Trust
Fund, and the Local 282 Vacation and Sick Leave Trust Fund,

INDEX#: 11-CV-4215(SLT)

against

Plaintiff(s)

Metro D Excavation and Foundation, Inc.,

Defendant(s)

AFFIDAVIT OF SERVICE

State of New York }
County of New York } ss.:

The undersigned, being duly sworn, deposes and says:

Deponent is not a party herein, is over 18 years of age and resides in Wheatley Heights, New York

That on **11/22/2011 at 9:06 AM at 50-63 41st Street, Astoria, NY 11104**

deponent served a(n) **Subpoena Duces Tecum Ad Testificandum**

on **Metro D Excavation and Foundation Inc.**, a domestic corporation,

by delivering thereat a true copy to **Tara Persaud** personally, deponent knew said

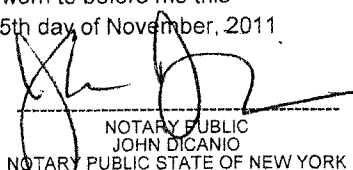
corporation so served to be the corporation witness and knew said individual to be **Managing Agent** thereof.

Description of Person Served:

Gender: Female
Skin: Brown
Hair: Brown
Age: 35
Height: 5' 4" - 5' 8"
Weight: 100-130 Lbs.
Other:

At the time of said service, deponent paid (tendered) in advance \$45.00 the authorized traveling expenses and one day's witness fee.

Sworn to before me this
25th day of November, 2011


NOTARY PUBLIC
JOHN DICANIO
NOTARY PUBLIC STATE OF NEW YORK
WESTCHESTER COUNTY
LIC. # 01DI497768
COMM EXP. 2/11/2015

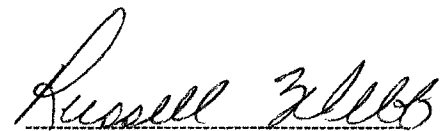

Russell Webb
License No. 1216146

EXHIBIT E

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----x
JOSEPH A. FERRARA, SR., FRANK H.
FINKEL, MARC HERBST, DENISE
RICHARDSON, THOMAS CORBETT, ANTHONY
D'AQUILA, THOMAS GESUALDI, LOUIS
BISIGNANO, DOMINICK MARROCCO, and
ANTHONY PIROZZI, as Trustees and
Fiduciaries of the Local 282
Pension Trust Fund, the Local 282
Annuity Trust Fund, the Local 282
Job Trust Fund, and the Local 282
Vacation and Sick Leave Fund,

ORIGINAL

Plaintiffs, Case No.
11-CV-4215
(SLT)

-against-

METRO D EXCAVATION AND FOUNDATION,
INC.,
Defendant.

-----x

PROPOSED DEPOSITION of METRO D
EXCAVATION AND FOUNDATION, INC., taken on
behalf of Plaintiffs, at UNITED STATES
DISTRICT COURT, EASTERN DISTRICT OF NEW YORK,
225 Cadman Plaza East, Room S4, Brooklyn, New
York 11201, commencing at 10:29 a.m.,
Thursday, January 26, 2012, before Deborah
Huntsman, a Shorthand Reporter and Notary
Public of the State of New York.

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2 A P P E A R A N C E S:

3 COHEN, WEISS and SIMON LLP
4 Attorneys for Plaintiffs
5 330 West 42nd Street
6 New York, New York 10036

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8 BY: ZACHARY N. LEEDS, ESQ.
9 (212) 356-0251

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1 Proceedings

2 MR. LEEDS: I am Zachary Leeds,
3 Plaintiffs' counsel.

4 We are here pursuant to subpoena
5 to depose the representatives of the
6 Defendant in this case.

7 The subpoena is marked as
8 Plaintiffs' Exhibit 1.

9 (Whereupon, the subpoena was
10 marked as Plaintiffs' Exhibit 1 for
11 identification, this date.)

12 MR. LEEDS: The affidavit of
13 service of the subpoena is marked as
14 Plaintiffs' Exhibit 2.

15 (Whereupon, the affidavit of
16 service was marked as Plaintiffs'
17 Exhibit 2 for identification, this
18 date.)

19 MR. LEEDS: It was served on
20 November 22, 2011, on a representative
21 of the Defendant.

22 The deposition was scheduled to
23 begin at 10:00. It is now about
24 10:30. The Defendant has not
25 contacted me or, to my knowledge,

1 Proceedings

2 anyone else representing the
3 Plaintiffs in this case regarding the
4 deposition, and the Defendant is not
5 here.

6 We will now close the record.

7 (Time noted: 10:30 a.m.)

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WITNESS

EXAMINATION

PAGE

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None

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E X H I B I T S

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PLAINTIFFS'

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FOR IDENTIFICATION

PAGE

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1 The subpoena

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2 The affidavit of service

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C E R T I F I C A T E

STATE OF NEW YORK)
 : SS:
COUNTY OF KINGS)

I, DEBORAH HUNTSMAN, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That the within is a true and
accurate transcript of the proceedings taken
on the 26th day of January, 2012.

I further certify that I am not
related by blood or marriage to any of the
parties and that I am not interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 26th day of January, 2012.


DEBORAH HUNTSMAN

EXHIBIT F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
JOSEPH A. FERRARA, SR., FRANK H. FINKEL, :
MARC HERBST, DENISE RICHARDSON, :
THOMAS CORBETT, ANTHONY D'AQUILA, :
THOMAS GESUALDI, LOUIS BISIGNANO, :
DOMINICK MARROCCO, and ANTHONY :
PIROZZI, as Trustees and Fiduciaries of the Local :
282 Pension Trust Fund, the Local 282 Annuity :
Trust Fund, the Local 282 Job Trust Fund, and the :
Local 282 Vacation and Sick Leave Trust Fund, :
Plaintiffs, :

Case No.
10-CV-4215 (SLT)(LB)

- against -

METRO D EXCAVATION AND FOUNDATION,
INC.,

Defendant.

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PROPOSED ORDER

This action was commenced on September 16, 2010 by the filing of the complaint and the issuance of the summons. Judgment was entered by the Court on August 17, 2011 in favor of Plaintiffs, Joseph A. Ferrara, Sr., Frank H. Finkel, Marc Herbst, Denise Richardson, Thomas Corbett, Anthony D'Aquila, Thomas Gesualdi, Louis Bisignano, Dominick Marrocco, and Anthony Pirozzi, as Trustees and Fiduciaries of the Local 282 Pension Trust Fund, the Local 282 Annuity Trust Fund, the Local 282 Job Trust Fund, and the Local 282 Vacation and Sick Leave Trust Fund, and against defendant Metro D Excavation and Foundation, Inc. (the "Company"), in the amount of \$49,735.67, plus per diem interest of \$11.58 from February 25, 2011 through the date of judgment equaling \$2,014.92.

IT IS HEREBY ORDERED that Metro D Excavation and Foundation, Inc.

(a) provide answers responsive to plaintiffs' information subpoena served on the

Company dated September 7, 2011, and (b) produce any and all documents responsive to plaintiffs' Subpoenas Duces Tecum Ad Testificandum served on the Company dated November 18, 2011, on or before 5:00 p.m. on March 16, 2012 at the offices of Cohen, Weiss and Simon LLP, 330 West 42nd Street, 25th Floor, New York, New York; and

IT IS FURTHER ORDERED that the Company appear to be deposed, as set forth in plaintiffs' Subpoena Duces Tecum Ad Testificandum dated November 18, 2011, on March 27, 2012 at 10 a.m., at the offices of Cohen, Weiss and Simon LLP, 330 West 42nd Street, 25th Floor, New York, New York; and

Failure to respond to the Restraining Notice and Information Subpoena, and Subpoena Duces Tecum Ad Testificandum as set forth herein, will serve as grounds for finding that Metro D Excavation and Foundation, Inc. is in contempt of this Court and will be subject to civil and criminal penalties.

The plaintiffs shall arrange for service of this Order by overnight delivery to Metro D Excavation and Foundation, Inc. Proof of such service shall be filed with the Court.

SO ORDERED.

United States Magistrate Judge Lois Bloom

Dated: _____